**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1948 of 1983**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RAMPALJI KOTHARI & 12 - Appellant(s)**
**Versus**
**MUNICIPAL COMMISSIONER - Defendant(s)**

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**Appearance :**
(MR HB KANSARA) for Appellant(s) : 1 - 13.
MR MG NAGARKAR for Defendant(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 25/08/2006**

**ORAL JUDGMENT**

1. Though served, nobody appears on behalf of the appellants.

2. Present appeal has been filed by the appellants herein – original plaintiffs (hereinafter referred to as “the plaintiffs”) challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 5th August, 1983 passed in Civil Suit No.2027 of 1982 in dismissing the said suit.

3. The plaintiff samiti, a public charitable trust filed the aforesaid suit against the defendant - Corporation for a declaration and injunction that the suit properties consisting of Survey Nos.66/A, 66/B and 67 and bearing Municipal Census Nos.1032, 1033 to 10 and 1934 to 10 are liable to be exempted from the liability of the municipal general taxes and prayed for an injunction restraining the defendant - Corporation from recovering the taxes from the trust.

4. It was averred in the plaint that it was the contention on behalf of the plaintiff that the plaintiff - samiti is a registered public

charitable trust with the office of the public trusts. The suit properties are belonged to the plaintiff and are situated near Sahibaug, Camp Road, Ahmedabad, which in all admeasuring 36 ½ Gunthas having a bungalow and the same have been purchased by the plaintiff - trust for a sum of Rs.6,00,000/-. It was the contention on behalf of the plaintiffs that after the trust property was purchased, it has been put to charitable use and the religious discourses are going on in part of the premises and that no portion thereof has been given on rent but if somebody wants to use the hall for marriage purposes, etc., then as per the desire of the parties, they accept donation from them but such a use is being permitted only if the programme of religious discourses is not hampered or hindered. It was submitted that the income from the same is used for religious purposes. Considering Section 132 of the BPMC Act; 1948, such a building and/or land is exempted from payment of municipal general taxes.

5. The suit was resisted by filing written statement at Exh.8. It was submitted that deriving income for giving the plot for the marriage purposes, cannot be said to be using it for the public charitable purpose and therefore, Section 132 of the BPMC Act would not be applicable. The issues were framed at Exh.27. One of the issue was that *whether the plaintiff proves that it being a registered charitable trust is entitled to claim tax exemption from the defendant Corporation and that the order passed by the Corporation on 24th March, 1982 is illegal.* The documentary evidences were produced in form of Exhs.17, 18, 19, 20, 21 upto 31. On behalf of the plaintiff, Shri Shivlal Mohanlal Shah came to be examined at Exh.28, who was the secretary of the plaintiff - trust and one Shri Shantilal Ramanlal Kothari was examined at Exh.34, who was the accountant of the plaintiff-trust. On behalf of the defendant, one Shri Kantilal Chandulal Shah was examined at Exh.39, who was serving with the Corporation as Divisional Superintendent. After considering the

provisions of Section 132 of the BPMC Act as well as considering the activities carried out by the plaintiffs and that the land/plot/hall in question was used for the marriage purposes and in absence of any other evidence such as books of accounts, etc., to show how the property is directed to be used as well as how the income received out of the donation is utilized and in what manner, much less charitable purpose, the learned trial Court dismissed the suit by holding that the plaintiff is not entitled to any exemption from payment of municipal general taxes and other taxes as claimed under Section 132 of the BPMC Act. Being aggrieved and dissatisfied with the judgment and decree passed by the learned City Civil Court, Ahmedabad, passed in Civil Suit No. 2027 of 1982 on 5th August, 1983 in dismissing the said suit, the appellants herein – original plaintiffs have preferred the present appeal.

6. On the pleadings, it appears that it is the contention on behalf of the plaintiffs that the

learned trial Court has committed error in not granting the benefit/considering the exemption under Section 132 of the BPMC Act, more particularly, when some portion of the property, was used for the purpose of teaching and therefore, the learned trial Court ought to have granted the benefit. It also appears from the pleadings that it is the contention on behalf of the plaintiffs that when the income, from the aforesaid hall in question, given on rent for the purpose of marriage, is utilized and/or spent for the charitable purpose and the said income is to be treated as a donation, then in that case, Section 132 of the BPMC Act would be applicable and therefore, the plaintiffs would be entitled to exemption from the payment of municipal general taxes, etc.,

7. Now, looking to the evidence on record, it is not in dispute that the hall in question is given for marriage reception, however, it is the contention on behalf of the appellants that the amount received is to be treated as donation and

constituted for charitable purposes within the definition of the Act. Now, it is required to be noted and as rightly observed by the learned trial Court that even though the account of the trust has been examined, no effort is made on the part of the plaintiffs to produce the books of the account of the trust to treat the properties put to use as well as the income received out of the donation is utilized in what manner, much less charitable purposes. Giving a hall for marriage reception and getting the rent, by whatever be the normal culture, cannot be said to be using the said marriage hall for charitable purposes, more particularly, in the present appeal, there is no evidence that the said donation/rent is used for charitable purposes and in what manner. In absence of any such evidence, the learned trial Court has rightly held that the plaintiff would not be entitled to the exemption as claimed under Section 132 of the BPMC Act. No illegality has been committed by the learned trial Court in dismissing the aforesaid suit and this Court is

in complete agreement of the reasonings and finding given by the learned trial Court.

8. For the reasons stated above, the appeal fails and is required to be dismissed and is accordingly dismissed. However, there shall be no order as to costs. Ad-interim relief, if any, stands vacated forthwith.

[ M.R.SHAH, J.]

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